

## PUBLIC VERSION

BEFORE THE STATE CORPORATION COMMISSION

OF THE STATE OF KANSAS

In the Matter of the Application of Kansas Gas )  
Service, a Division of ONE Gas, Inc.'s )  
Submission of its Insurance Policy Agreements ) DOCKET NO. 24-KGSG-460-CON  
with Utility Insurance Company, Pursuant to )  
K.S.A. 66-1402. )

### **RESPONSE OF THE CITIZENS' UTILITY RATEPAYER BOARD TO STAFF'S REPORT AND RECOMMENDATION**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and hereby submits its response to the Report and Recommendation ("R&R") which was filed by the Kansas Corporation Commission Staff ("Staff") on October 10, 2024, regarding the filing of insurance policy agreements by Kansas Gas Service, a Division of ONE Gas, Inc. ("KGS" and "ONE Gas," respectively), pursuant to K.S.A. 66-1402, on December 21, 2023. In support thereof, CURB states as follows:

#### **Background**

1. In 2018, ONE Gas created Utility Insurance Company ("UIC"), a wholly owned Captive Insurance Company ("CIC"), to provide ONE Gas' distribution companies, KGS, Oklahoma Natural Gas, and Texas Gas Service, insurance coverage for auto liability claims, general and excess liability, and worker's compensation and employer's liability claims.<sup>1</sup> Under K.S.A. 66-1402, no management, construction, engineering or similar contract between a Kansas

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<sup>1</sup> Application, 18-KGSG-392-CON, March 14, 2018, p. 2.

utility and an affiliated interest (as defined in K.S.A. 66-1401) shall be effective until it is filed with the Kansas Corporation Commission (“Commission”).<sup>2</sup> The Commission may disapprove any such contract if it finds that the contract is not in the public interest.<sup>3</sup>

2. On March 14, 2018, KGS initially filed its Insurance Policy Agreement with UIC, an affiliate of KGS, with the Commission pursuant to K.S.A. 66-1402. Staff reviewed the contract and costs in Docket No. 18-KGSG-392-CON (“18-392 Docket”) and recommended that the Commission take no action to prevent the establishment of UIC.<sup>4</sup> In the 18-392 Docket, Staff noted, “It is known that ONE Gas will incur additional costs by operating a captive insurance company compared to not having a captive insurance company, but ONE Gas believes that insurance costs and claims will decrease enough to cover these additional operating costs.”<sup>5</sup> By Order Closing Docket, issued on September 18, 2018, the Commission adopted Staff’s recommendation.<sup>6</sup>

3. On December 21, 2023, KGS filed its Application with the Commission, submitting its Insurance Policy Agreements with UIC, an affiliated company of ONE Gas, pursuant to K.S.A. 66-1402 in the present docket.<sup>7</sup> In its application, KGS states that the arrangement with UIC will not result in increased risks or burdens to Kansas customers. Rather, KGS anticipates that the primary benefit from purchasing insurance coverage from UIC will be a reduction in the deductible per incident to \$100,000. UIC’s insurance coverage will cover claims greater than \$100,000 and

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2 K.S.A 66-1402.

3 Id.

4 Notice of Filing of Staff Report and Recommendation, 18-KGSG-392-CON, August 31, 2018, p. 4.

5 Id.

6 Order Closing Docket, 18-KGSG-392-CON, September 18, 2018.

7 Application, 24-KGSG-460-CON, December 21, 2023, p. 1.

purchase re-insurance for claims greater than \$2 million.<sup>8</sup> KGS also asserts, “UIC allows for consistent, competitive insurance rates over the long-term and lower priced reinsurance in the general or retail marketplace and premium tax savings.”<sup>9</sup>

4. KGS further asserts that the premium paid to UIC in excess of claims paid out each year will be placed into a reserve for future years and will not be considered income for UIC.<sup>10</sup> KGS notes that the use of a wholly-owned CIC has been successfully utilized by other regulated utilities such as Evergy, Atmos Energy, and American Electric Power. Finally, KGS claims that UIC will provide ONE Gas and KGS flexibility in different market conditions by providing them direct access to reinsurance markets.<sup>11</sup>

5. On December 28, 2023, CURB filed for intervention in this docket which the Commission granted on January 4, 2024.<sup>12</sup> There are no other intervenors in this docket. Both Staff and CURB have issued several data requests (“DRs”) to which KGS has responded.

6. On October 10, 2024, Staff filed its R&R.<sup>13</sup> Therein, Staff noted that over the last five years, UIC has obtained insurance coverage in the range of \$250,000 to \$2,000,000 at a reasonable cost to ONE Gas and its three distribution companies. Staff highlights that, in the 18-392 Docket, UIC estimated that it would initially incur additional operating expenses, but that those expenses would eventually decline. In this docket, however, Staff found that over the last five years, UIC did incur higher than projected operating expenditures, but these expenditures were

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8 Id, p. 3.

9 KGS Response to CURB Data Request 24-460 No. 4.

10 Application, 24-KGSG-460-CON, December 21, 2023, p. 3.

11 Id, pp 3-4.

12 Order Granting CURB’s Petition to Intervene; Protective and Discovery Order, January 4, 2024.

13 Notice of Filing of Staff Report and Recommendation, 24-KGSG-460-CON, October 10, 2024, p. 1.

offset by lower insurance premiums and cost savings compared to the public insurance market.<sup>14</sup> To keep premiums at competitive prices, UIC continues to conduct pricing studies and review indications from the commercial markets each year to ensure that UIC is providing an equal or lower premium. UIC cannot pay out its profits in the form of dividends to ONE Gas without the Oklahoma Insurance Commission's approval. To date, UIC has not paid out any dividends.<sup>15</sup> In its R&R, Staff recommended the Commission not take action to disapprove the 2023 contract between KGS, a Division of ONE Gas, Inc., and its wholly-owned captive insurance company, UIC.<sup>16</sup>

7. However, Staff expressed the following concerns regarding the UIC contracts:

a. Under K.S.A. 66-1402, whenever ONE Gas negotiates a new insurance contract with UIC, KGS is required to file the insurance contract with the Commission. ONE Gas has renegotiated the insurance contract every year since 2018; however, Staff was concerned that KGS has not filed the new contracts with the Commission until the 2023 contract was renegotiated.<sup>17</sup>

b. Staff highlighted that there was a material increase in the annual premium costs for general insurance since 2018.<sup>18</sup>

c. The potential that the operating costs of using a CIC that would end up costing ratepayers more than initially compared to not creating a captive insurance company.<sup>19</sup>

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14 Id, p. 1.

15 Id, p. 2.

16 Id, p. 6.

17 Id, p. 4.

18 Id, p. 5.

19 Id, p. 5.

## **CURB's Response**

8. CURB appreciates the opportunity to engage in discussions with Staff and KGS regarding the use of UIC. In CURB's view, K.S.A. 66-1402 is an important statute because it provides the Commission authority to disapprove of contracts between public utilities and their affiliates ("Affiliate Contracts") when such contracts are not in the public interest.<sup>20</sup> Regulation of this aspect of a utility's operations helps to protect ratepayers. In these regards, it has been asserted, "In the absence of such authority, a public utility can (1) arrange transactions with affiliated entities that result in the utility overpaying for goods or services, thereby increasing rates, or (2) take on financial burdens attributable to affiliated entities, which can threaten its solvency."<sup>21</sup> The root of the problem is that Affiliate Contracts are not made at arm's length or on an open market.<sup>22</sup>

9. Indeed, to ensure that the public interest is being promoted in utility regulation, vigilance and reasonable scrutiny of Affiliate Contracts are required. Some urge regulators to use "existing standards and authorities in a more skeptical and aggressive manner" to maintain the public interest in Affiliate Contracts.<sup>23</sup> In CURB's opinion, the Commission does so. For example, recognizing the harm that can occur through Affiliate Contracts, the Commission determined in a well-celebrated docket that an agreement between one utility and its non-regulated affiliates was harmful to ratepayers, violating the public interest.<sup>24</sup>

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<sup>20</sup> K.S.A. 66-1402.

<sup>21</sup> 4 Nev. Law Journal, "Shutting the Barn Door Before the Horse is Stolen: How and Why State Public Utility Commissions Should Regulate Transactions Between a Public Utility and its Affiliates," p. 164 (Fall 2003).

<sup>22</sup> Id.

<sup>23</sup> 171 U. Pa. L. Rev., "Hidden Value Transfers in Public Utilities, p. 2171 (July 2023).

<sup>24</sup> See Docket No. 01-WSRE-949-GIE, Order In the Matter of the Investigation of Actions of Western Resources, Inc. to Separate Its Jurisdictional Electric Public Utility Business from its Unregulated Businesses, p. 12-13 (July 20, 2001).

10. CURB has evaluated the application, responses to all DRs, and Staff's R&R from the perspective of residential and small commercial ratepayers. CURB notes that KGS was forthcoming in its responses to the DRs issued by CURB and Staff. Further, the application posits a number of safeguards to ensure that KGS's use of a CIC remains in the public interest. On the basis of its review, CURB agrees with Staff that the Commission should take no action to disapprove the 2023 contract between ONE Gas and UIC.

11. In these regards, CURB researched the types of benefits an organization typically receives by using a CIC. A CIC is a wholly-owned subsidiary insurer formed to provide risk mitigation services for its parent company or related entities. Companies form CICs when the parent company cannot find a suitable outside firm to insure it against specific business risks. The parent company may also be able to save on premium costs by using a CIC because traditional insurance companies charge higher premiums to cover their own costs and earn a profit.<sup>25</sup> The premiums paid to the CIC create tax savings and the CIC can offer better (or more affordable) coverage for the parent company's specific risks.<sup>26</sup>

12. According to CaptivePlanning.com there are several forms of CICs.

a. Single-Owner Captive forms allow a single owner to set up and operate the company to insure its own risks and the risks of its subsidiaries and affiliates.

b. Group Captive forms are owned by multiple, non-related organizations, policyholders, and are initially set up to insure the risks of the owners.

c. Rent-a-Captive forms are owned by an organization that is not one of the

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<sup>25</sup> Notice of Filing of Staff Report and Recommendation, 24-KGSG-460-CON, October 10, 2024, p. 2.

<sup>26</sup> <https://www.investopedia.com/terms/c/captive-insurance-company.asp>, Julia Kaan, July 12, 2024.

policyholders. An example of a rent-a-captive is an insurance broker.

d. Protected Cell Companies are also known as segregated portfolio companies that allows a captive to segregate accounts so that each account is legally protected from the liabilities of other accounts in the captive.

e. Special Purpose Captive is a catchall category that covers all remaining captives not covered by statute.<sup>27</sup>

13. Under this dichotomy, UIC is a single-owner captive. Categorically referring to captive insurance companies as pure captive, group captive, industrial captive and risk retention groups, Staff defines UIC as a pure captive. CURB believes that the form of UIC as a single-owner captive (or pure captive) is appropriate.

14. Moreover, like Staff, CURB remains supportive in this docket of KGS's use of a CIC, provided the same continues to be in the public interest. CURB supports reasonable and cost-effective measures by KGS to guard against increased insurance costs, helping protect ratepayers from increased premiums. Because these kinds of expenses may be recovered from ratepayers, reduced insurance premiums and savings should result in lower rates.

15. CURB believes that a CIC can provide an organization several financial benefits by: stabilizing premiums; improving risk management; enabling control over unpredictable commercial insurance markets; unbundling support services; providing access to reinsurance; achieving cost savings; cash flow and favorable regulations.<sup>28</sup> CURB agrees with Staff that UIC provides specific benefits to KGS, which include: having a better position in negotiations with

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<sup>27</sup> <https://captiveplanning.com/education/types-of-captives/>  
<sup>28</sup> Id.

external markets; consistently competitive rates over time; and premium tax savings.<sup>29</sup>

16. Nonetheless, CURB echoes the concerns noted in Staff's R&R. In response to DR KCC-009, Staff asked KGS to provide the filing frequency UIC has with the KCC regarding UIC contracts. KGS concedes that it must submit renegotiated UIC contracts with the Commission pursuant to K.S.A. 66-1402, but the renegotiated UIC contracts were not filed as required. However, KGS has taken steps to implement a process to ensure that timely filings will be made in future and will likely occur annually.<sup>30</sup>

17. CURB believes it is imperative that KGS file with the Commission all captive insurance contracts it renegotiates with UIC pursuant to K.S.A. 66-1402. From 2019 through 2022, KGS failed to file these filings. Technical compliance with the statute is clearly important. Yet, from a practical matter, failing to file Affiliate Contracts deprives the KCC of the review which CURB believes is essential to protecting the public interest.

18. Therefore, CURB is heartened to see the steps KGS will use to inform the Commission as to the changes in future renegotiated insurance contract terms. In DR KCC-012, KGS outlined the steps it has taken to implement a process to ensure timely filings will be made in the future.<sup>31</sup> CURB believes that the steps outlined by KGS are reasonable, appropriate, and will heretofore result in timely filings of future renegotiated UIC contracts.

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29 Notice of Filing of Staff Report and Recommendation, 24-KGSG-460-CON, October 10, 2024, pp 3-4.

30 See response to Staff Data Request No. 009.

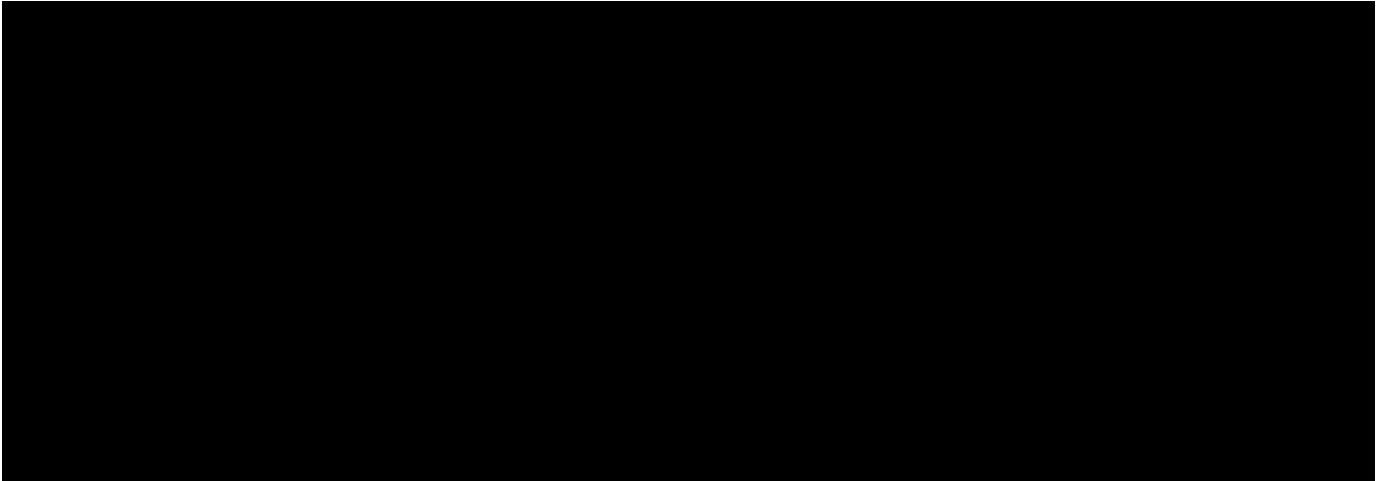
31 See response to Staff Data Request No 012.



19. Like Staff, CURB is also concerned with the increased premium cost KGS pays to UIC for auto, liability, property, and workers' compensation. In these regards, KGS sponsored the data in response to DR KCC-004 which makes up the following table:

**\*\*BEGIN CONFIDENTIAL\*\***

[REDACTED]



[REDACTED]

[REDACTED].<sup>32</sup>**\*\*END CONFIDENTIAL\*\***

20. However, KGS stated UIC premiums have increased due to:
1. reduction in deductibles from \$250,000 to \$100,000;
  2. property premiums are determined based on ONE Gas' divisions replacement costs;
  3. inflation;
  4. significant increases in the overall insurance market; and

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<sup>32</sup> See response to Staff Data Request No. 004.

5. reinsurers seeing an increase in General Liability and Excess Liability Auto coverages.<sup>33</sup>

The reduction in deductibles from \$250,000 to \$100,000 ostensibly can be a benefit to KGS ratepayers depending upon claims filed against the insured. Additionally, CURB is aware of the presence of inflation as a contributing factor in increasing costs and that insurance premiums are rising throughout the market. More importantly, CURB notes KGS's representations, "The premiums charged by UIC were designed by an external actuary utilizing 20 years of actual claims history and approved by the Oklahoma Insurance Department. UIC will be audited annually by an outside audit firm."<sup>34</sup> Moreover, KGS asserted in response to DR KCC-015 that total premium savings by having a captive insurance company compared to the cost of buying from a public insurance company for 2018 through 2023 are significant.<sup>35</sup>

21. Given these factors, CURB does not assert that the premiums paid under the 2023 contract renders the 2023 contract to be contrary to the public interest. However, given the rise in premiums, CURB stresses the importance of monitoring the same in future filings to ensure that ratepayers are benefiting from the lower rates and other benefits espoused by KGS.

22. CURB also shares Staff's concern about rising operating expenses. CURB notes that operating expenses associated with Actuary, Audit Fees and Management Fees have grown substantially in the last five years, and in some cases, doubled. Staff notes that in the 18-392 Docket, KGS represented that operating expenses would come down over the years.<sup>36</sup> CURB believes that this trend in operating costs needs to be monitored as future renegotiated contracts

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33 Notice of Filing of Staff Report and Recommendation, 24-KGSG-460-CON, October 10, 2024, p. 5.

34 Kansas Gas Service Application, Docket No. 24-KGSG-460-CON, December 21, 2023, p. 3.

35 See response to Staff DR KCC-015.

36 Notice of Filing of Staff Report and Recommendation, 24-KGSG-460-CON, October 10, 2024, p. 2.

are filed with the Commission.

23. Finally, CURB examined the increase in reserves, consisting of retained earnings and other income, over the past five years. In response to DR KCC-010, KGS acknowledges the increase but states that the incurred but not reported amount is actuarially based and materially correct.<sup>37</sup> At this time, CURB agrees that the increase in reserves is operating as it should. CURB merely points out the need to ensure that the reserves continue to be actuarially based and materially correct in the future.

24. All of these concerns are prospective as to future filings. CURB, like Staff, does not believe that the 2023 Contract between UIC and ONE Gas is contrary to the public interest. Therefore, CURB has no reason to request that the contract be disapproved by the Commission.

### **Conclusion**

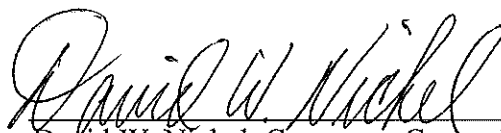
25. CURB finds it encouraging that KGS has instituted a process to inform the KCC about changes in its insurance coverage from UIC. KGS represents that it has realized savings of approximately **\*\*BEGIN CONFIDENTIAL\*\*** [REDACTED] **\*\*END CONFIDENTIAL\*\*** from 2018 through 2023, even with the increased costs of acquiring insurance for property, auto liability and general liability providing KGS receives the benefit of savings by acquiring insurance through a UIC. Therefore, CURB supports Staff's R&R and believes that the Commission should not disapprove the contract between ONE Gas and UIC.

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<sup>37</sup> See response to Staff DR KCC-010.

WHEREFORE, CURB respectfully agrees with Staff that the Commission need not take action to disapprove the new 2023 contract between ONE Gas and UIC

Respectfully submitted,



David W. Nickel, Consumer Counsel #11170

Todd Love, Attorney #13445

Joseph R. Astrab, Attorney #26414

Citizens' Utility Ratepayer Board

1500 SW Arrowhead Road

Topeka, KS 66604

(785) 271-3200

david.nickel@ks.gov

todd.love@ks.gov

joseph.astrab@ks.gov

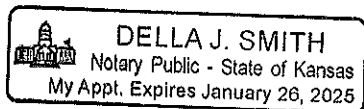
**VERIFICATION**

STATE OF KANSAS                            )  
                                                      )  
COUNTY OF SHAWNEE                    )  
                                                      )                ss:

I, David W. Nickel, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief under the pains and penalties of perjury.

*David W. Nickel*  
\_\_\_\_\_  
David W. Nickel

SUBSCRIBED AND SWORN to before me this 21<sup>st</sup> day of Octobert, 2024.



*Della J. Smith*  
\_\_\_\_\_  
Notary Public

My Commission expires: 01-26-2025.

**CERTIFICATE OF SERVICE**

24-KGSG-460-CON

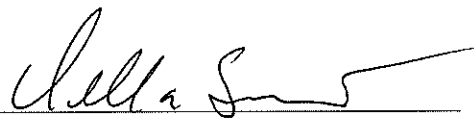
I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 21<sup>st</sup> day of October, 2024, to the following:

JAMES G. FLAHERTY, ATTORNEY  
ANDERSON & BYRD, L.L.P.  
216 S HICKORY  
PO BOX 17  
OTTAWA, KS 66067  
[jflaherty@andersonbyrd.com](mailto:jflaherty@andersonbyrd.com)

AHSAN LATIF, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
[a.latif@kcc.ks.gov](mailto:a.latif@kcc.ks.gov)

JANET BUCHANAN, DIRECTOR- REGULATORY AFFAIRS / OKE 13165  
KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC.  
7421 W 129TH STREET  
OVERLAND PARK, KS 66213  
[janet.buchanan@onegas.com](mailto:janet.buchanan@onegas.com)

ROBERT E. VINCENT, MANAGING ATTORNEY  
KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC.  
7421 W. 129TH STREET  
OVERLAND PARK, KS 66213  
[robert.vincent@onegas.com](mailto:robert.vincent@onegas.com)



Della Smith  
Senior Administrative Specialist